

Criminal No. 11-101  
[UNDER SEAL]

In order for the crime of Distribution of Material  
Depicting the Sexual Exploitation of a Minor, in violation of 18

U.S.C. § 2252(a)(2), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That the defendant knowingly distributed a visual depiction of a minor in interstate or foreign commerce or using an instrument of interstate or foreign commerce, by any means including by computer, or through the United States mail

Title 18, United States Code, Section 2252(a)(2); United States v. X-Citement Video, 115 S.Ct. 464 (1994); United States v. Gallardo, 915 F.2d 149 (5th Cir. 1990)

2 That the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct, as those terms are defined in Title 18, United States Code, Section 2256, and the defendant knew the visual depiction was of a minor.

Title 18, United States Code, Section 2252(a)(2); United States v. McCormick, 675 F.Supp 223 (M.D. Pa 1987), United States v. X-Citement Video, 115 S.Ct. 464 (1994)

3. That the visual depiction is of such conduct.  
Title 18, United States Code, Section 2251(a)(2)(B).

### III. PENALTIES

A. As to Count 1 Distribution of Material Depicting the Sexual Exploitation of a Minor (18 U.S.C. § 2252(a)(2)).

1. Imprisonment of not less than five (5) years and not more than twenty (20) years, but if the defendant has a prior conviction under Title 18, United States Code, Chapter 110, Chapter 71, Chapter 109A, Chapter 117 or under section 920 of title 10, or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned not less than 15 years nor more than 40 years

2. A fine of \$250,000 00, 18 U.S.C. §3571(b)(3);

3. A term of supervised release of at least 5 years, up to life, 18 U.S.C. §3583(k);

4. Any or all of the above.

#### **IV. MANDATORY SPECIAL ASSESSMENT**

A mandatory special assessment of \$100.00 must be imposed at each count upon which the defendant is convicted, pursuant to 18 U S.C. § 3013.

#### **V. RESTITUTION**

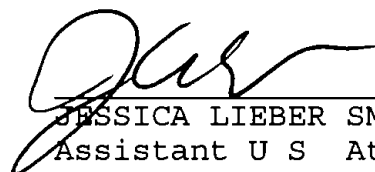
Restitution may be required in this case, together with any authorized penalty, as part of the defendant's sentence pursuant to 18 U.S.C §§ 3663, 3663A, and 3664.

VI. FORFEITURE

Not applicable in this case.

Respectfully submitted,

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